

SCOTT N. SCHOOLS (SCSBN 9990)  
United States Attorney

BRIAN STRETCH (CABN 163973)  
Chief, Criminal Division

DENISE MARIE BARTON (MABN 634052)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7359  
Facsimile: (415) 436-7234  
Email: denise.barton@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. 07-90419 MISC EDL
Plaintiff,	)	
	)	
v.	)	<b>STIPULATION AND PROPOSED</b>
	)	<b>ORDER</b>
GILSON ARAUJO and	)	
WANDER CARLOS DE ARAUJO,	)	
Material Witnesses.	)	
_____	)	

On September 19, 2007, upon the filing of a Material Witness Application by the United States, the Honorable Elizabeth D. Laporte ordered that arrest warrants be issued for Gilson Araujo and Wander Carlos De Araujo as a material witnesses pursuant to Title 18, United States Code, Section 3144 and further ordered that the parties take the depositions of the material witnesses pursuant to Fed. R. Crim. P. 15(a). In the interests of proceeding to depositions

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1 expeditiously, counsel for the Araujo and De Araujo each waived the right to a detention hearing  
2 in light of the fact that each witness was detained on pending criminal matters and subject to an  
3 immigration detainer.  
4

5 On October 12, 2007, material witnesses Gilson Araujo and Wander Carlos De Araujo  
6 were deposed pursuant to the September 19, 2007 Order. Also, on October 12, 2007, Gilson  
7 Araujo and Wander Carlos De Araujo each were sentenced on their respective criminal matters,  
8 07-536 MAG and 07-575 MAG, and received time-served sentences.  
9

10 Once a material witness has given testimony, he may seek release from detention on the  
11 material witness arrest warrant. Courts have routinely held that continued detention of a material  
12 witness pending trial constitutes an “exceptional circumstances” as contemplated by Fed. R.  
13 Crim. P. 15(a) and is a basis to permit the taking of a deposition. United States v. Lai Fa Chen,  
14 214 F.R.D. 578, 580 (N.D. Ca. 2003). Further, this Circuit has held that “No material witness  
15 shall be detained because of inability to comply with conditions of release if the testimony of  
16 such witness can adequately be secured by deposition ...” Bacon v. United States, 449 933 (9<sup>th</sup>  
17 Cir. 1971). The testimony of both material witnesses, Gilson Araujo and Wander Carlos De  
18 Araujo, was secured by deposition on October 12, 2007. Accordingly, the parties jointly move to  
19 recall the Material Witness Arrest warrants, dismiss this Material Witness matter, and release the  
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28 // STIPULATION AND [PROPOSED] ORDER, No. CR 07-90419 MISC EDL

1 material witnesses, Gilson Araujo and Wander Carlos De Araujo, FORTHWITH to the custody  
2 of Immigration  
3 and Customs Enforcement.  
4

5 Dated: October 13, 2007

Respectfully submitted,  
6 SCOTT N. SCHOOLS  
7 United States Attorney

8  
9 \_\_\_\_\_/s/\_\_\_\_\_  
DENISE MARIE BARTON  
10 Assistant United States Attorney  
11

12 \_\_\_\_\_/s/\_\_\_\_\_  
13 ALAN DRESSLER  
14 Attorney for GILSON ARAUJO  
15

16 \_\_\_\_\_/s/\_\_\_\_\_  
17 GEORGE BOISSEAU  
18 Attorney for WANDER CARLOS DE ARAUJO

19 **[PROPOSED] ORDER**

20 For the reasons stated in the foregoing Stipulation, IT IS HEREBY ORDERED that the  
21 Material Witness Arrest warrants are recalled, this Material Witness matter is dismissed, and the  
22 Material Witnesses, Gilson Araujo and Wander Carlos De Araujo shall be released  
23 FORTHWITH to the custody of Immigration and Customs Enforcement.  
24  
25

26 Dated: \_\_\_\_\_

27 \_\_\_\_\_  
HON. EDWARD M. CHEN  
28 United States Magistrate Judge